IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO.1 OF 2006

M/s Mercantile Finance House
Private Limited, represented by
their Chairman Shri Mohammad
Ali Bhimji, having address at
203, United City Centre, 2nd Floor
M. G. Road, Panaji, Goa. ... Applicant

versus

1. M/s Mac Enterprises,
through their Sole Proprietor
Mr. Alfred M. Cotta, having
address at Hotel Miramar,
Miramar, Panaji, Goa.

2. State ... Respondents

Mr. A. R. Kantak, Advocate for the Applicant.

None present for the Respondents.

CORAM : N. A. BRITTO, J.

DATE : 24TH MARCH, 2006.

ORAL ORDER

Heard Mr. A. R. Kantak, the learned Counsel on behalf of the applicant/complainant. The respondents have chosen to remain absent.

2. The short question before this Court is whether this revision petition is to be entertained or not in the light of the provisions of Section 401(4) of the Code of Criminal Procedure, 1973(Code, for short) which reads as follows:-

> "Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who would have appealed".

3. The applicant herein is the Complainant in C. C. No.271/0A/99/B and the said complainant was prosecuting the respondent/accused under Section 138 of the Negotiable Instruments Act, 1881. The complaint came to be dismissed on 22-8-2005 as the complainant remained absent before the Court on that day and the accused came to be acquitted under Section 256 of the said Code.

4. In support of his submission that a revision could be entertained by this Court against the said Order of acquittal under Section 256 of the Code, Mr. Kantak has placed reliance on two decisions. The first is the case of **Rabindra Behera** v.

Sridhar Samantray and others(1996 Cr.L.J.832). The second is the case of **Sangappa V. Tenginakai** v. **The State**(2001(2) GLT 29). In the first case, the question which came for consideration is whether a wrong committed by the Court resulting in miscarriage of justice could be corrected and the complaint could be restored by the Court in exercise of revisional jurisdiction. It was contended before the High Court that by virtue of Sub-Section(4) of Section 401 of the Code since law provided for filing of an appeal, no proceeding by way of revision could be entertained. However, the Court proceeded to place reliance under Sub-Section(5) of Section 401 of the Code and held that since Sub-Section 5 of Section 401 of the Code provided that in case a revision was filed under erroneous belief that no appeal against the impugned order could be filed and it was in the interest of justice that a revision could be treated an an appeal and dealt with accordingly.

5. In the case of **Shiv Kumar** v.**Mohd. Saghir and others** (1997 Cr.L.J. 1264) what was filed before the Delhi High Court was an appeal for special leave and not a revision, against an order of acquittal under Section 256 of the Code. In the case of

H. P. Agro Industries Corporation Ltd. v. **M. P. S. Chawla** (1997(2) Crimes 591) a Single Judge of Himachal Pradesh High Court has held that when an accused was acquitted by dismissal of a complaint under Section 256 of the Code the remedy is by way of appeal and in the absence of availing such remedy, the High Court is not to exercise inherent powers to interfere with impugned order. It may be stated that an appeal is a matter of right while a revision is a matter of discretion of the Court entertaining the same and if Sub-Section(4) of Section 401 has provided a remedy against order of acquittal by way of an appeal there is no reason why this Court should entertain a revision against the same. That apart, it appears that there is preponderance of judicial opinion in support of the view that when a law provides a remedy of appeal, as is done by virtue of Sub-Section(4) of Section 401 of the Code, no revision be entertained. In the case of **State of Haryana** v. **Ramji Lal Devi Sahai and another** (1972 Cri.L.J.796) a Division Bench of the Punjab and Haryana High Court held that if a remedy of appeal is not availed of, the discretionary relief of revision need not be entertained. In the case of **Sapam Laingam Singh** v. **Kakyengpaibam Amuyaima Singh and others** (1971 Cri.L.J.

404) the Hon'ble Judicial Commissioner after considering various decisions including that of this Court(though no citation of the same is available) came to the conclusion that upon the failure of the complainant to file an appeal, a revision at his instance is incompetent. The provisions of Sub-Section(4) of Section 401 of the Code have not been specifically dealt with by this Court in the case of **Sangappa V. Tenginakai** v. **The State** (supra)and to that extent this decision has got to be considered as per incuriam. The complainant has chosen not to avail the remedy of appeal which he has by way of right and instead has filed a revision application, which, is a matter of discretion and in the light of what has been stated herein above need not be entertained.

6. In view of the above, Mr. Kantak seeks leave to withdraw the revision application. Leave granted. Revision Application shall stand dismissed as withdrawn. Certified copies and other documents be returned to the applicant to enable him to file appropriate proceedings.

N. A. BRITTO, J.

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